



TOWN OF DUDLEY

Massachusetts

Office of the Town Clerk

Dudley Municipal Complex
71 West Main Street • Room 207
Dudley, MA 01571

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Dudley Town Clerk
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townclerk@dudleyma.gov

LEGAL NOTICE Town of Dudley

Warrant Articles #14, 16, 18, and 22 of the Dudley Annual Town Meeting held on November 2, 2009 have received approval from the Attorney General's Office on February 16, 2010. The entire text of these by-laws is posted in the following five places in accordance with G.L c. 40 § 32: Dudley Municipal Complex, Dudley Post Office, Pearle Crawford Memorial Library, Nichols College Post Office and Shepherd Hill High School.

ARTICLE 14: As declared by the Moderator it was accepted by majority vote to amend The Town of Dudley By-law Article VI Duties of Town Officers, Section 16 to read as follows or take any other action relative thereto:

Section 16. The following official offices; Town Clerk, Treasurer, Collector, Personnel Board, Board of Assessors, Board of Health, Building, Planning and Zoning Board of Appeals, Water & Sewer Commissions, Conservation and the Board of Selectmen to have office hours one (1) night a week without any increase in the number of hours currently worked and that the Board of Selectmen set the appropriate day and time within the week. Upon request, the Board of Selectmen may waive this requirement for a specific office.

ARTICLE 16: As declared by the Moderator it was accepted by majority vote to amend Article XI Licenses & Permits, section 4 (b) by striking the words "Sixty (60)" and replacing with the words "One Hundred (100)" so the section reads as follows:

- b) The licensing authorities may grant a license for automatic amusement devices, which are used for games of skill or amusement only. The licensing authority shall not issue more than ~~Sixty (60)~~ One Hundred (100) automatic amusement device licenses to any one establishment nor to any one location in town. Automatic amusement device in this section shall mean: Coin operated pool tables, shuffle alley machines, coin operated kiddie rides, video games or any other device which does not offer free plays or money paid out to winners. The annual fee for each automatic device or for any renewal thereof, shall be twenty dollars (\$20.00). The fee for any change of premises shall be two dollars (\$2.00). Any violation of any of the provisions of this section shall for each and every offense forfeit and pay penalty of not more than twenty dollars (\$20.00) to the use of the town.

ARTICLE 18: As declared by the Moderator it was accepted by majority vote to amend The Town of Dudley By-law Article XXVII Dog Control By-Law by Amend Section 1 Definitions, Paragraph D. "Commercial Kennel" by adding the words " or cats" after the words "dogs" and to amend "Paragraph E. Residential Kennel" by adding the words "or three (3) cats" after the words "dogs" and amend Paragraph G Dog Officer by adding the words "or cats" after the word "dogs" and amend "Section 3 License Requirements, Fees Exceptions, Paragraph C." by adding the words "or three (3) cats" after the words "dogs" and adding new "Paragraph M. Commercial or Residential Kennel License for cats is Fifty Dollars (\$50.00)" so the paragraphs read as follows or take any other action relative thereto:

Section 1: Definitions

D. "Commercial Kennel" - One pack or collection of dogs or cats maintained on a single premise, whether maintained for breeding, boarding, training, adoption or sale."

E. "Residential Kennel" – More than three (3) dogs or three (3) cats over the age of six (6) months in a single private residence

G. "Dog Officer" – any officer appointed by the Board of Selectmen to enforce the laws relating to dogs or cats.

Section 3: License Requirements, Fees Exceptions

C. Any owner or keeper of more than three (3) dogs or Three (3) cats must acquire a residential kennel license.

M. Commercial or Residential Kennel License for cats is Fifty Dollars (\$50.00)

ARTICLE 22: Unanimously accepted as amended to amend the Town of Dudley By-law Article XVII Soil or Loam Removal by striking the article and replacing it with the by-law as written in the meeting warrant.

EARTH REMOVAL

Section A. DEFINITIONS

1. For the purpose of this by-law, "earth" shall include soil, loam, sand, gravel, borrow, rock, sod, peat, humus, clay, coal or other earth material.
2. For the purpose of this by-law, "Board" shall mean the Board of Selectmen.

Section B. EARTH REMOVAL PROCEDURE

1. No earth shall be removed from any parcel of land in the Town without a written permit from the Board, except as hereinafter provided.
2. Any person wishing to remove such material from a property in Town shall file an "Earth Removal Application" with the Board, which application shall include the following specific information and supporting documentation:
 - a. Legal name and signature of property owner
 - b. Legal address of property owner
 - c. Legal name and signature of the applicant
 - d. Legal address of the applicant
 - e. Street address of the proposed excavation and Dudley Assessors' Map and Lot numbers.
 - f. Description and purpose of the proposed excavation including the planned destination of material removed during the proposed excavation
 - g. Names and addresses of all abutting property owners including those across any streets, roads or ways

- h. A plan of the land drawn and stamped by a Massachusetts Registered Land Surveyor at a scale of 1"=40'-0" showing general topography within 100 (one-hundred) feet of the proposed excavation, and within 100 feet of the proposed travel route to and from the area/s of excavation, and showing wetlands, and streams, and rivers within 250-feet of the proposed excavation, and structures within 250-feet of proposed excavation, and rare species priority habitats and estimated priority habitats per Massachusetts Division of Fisheries and Wildlife, and the property address, and the owner's name and address, and date of plan, and scale of plan, and assessor's map and lot number.
- i. A plan drawn and stamped by a Massachusetts Registered Land Surveyor at a scale of 1"=40'-0" showing EXISTING contours at 10 (ten) foot intervals of the site, proposed excavation area(s), location and design of covered storage areas meeting CMR requirements for petroleum and other hazardous products, and contours at 10 (ten) foot intervals as of the proposed COMPLETION of the Excavation Project, and the property address, and the owner's name and address, and date of plan, and scale of plan, and assessor's map and lot number.
- j. A narrative of the proposed plan describing how the following will be addressed:
 - i. The description and purpose of the proposed excavation including the planned destination of material removed during the proposed excavation,
 - ii. The finished leveling and grading upon completion of the excavation,
 - iii. The placing of topsoil and planting/stabilization necessary to restore the area to usable or natural condition,
 - iv. The duration of the earth removal operation,
 - v. The construction of necessary fencing and other protections against nuisances,
 - vi. A copy of any Orders of Conditions, if determined to be necessary, from the Conservation Commission, or if no Orders of Conditions are necessary, a memo stating such from the Conservation Commission or their designee,
 - vii. The method of earth removal,
 - viii. Temporary construction,
 - ix. Hours of operation,
 - x. Dates when operation shall not occur (holidays, etc.),
 - xi. Routes of transportation of material,
 - xii. Control of temporary and permanent drainage,
 - xiii. Disposition of boulders, tree stumps and other such materials,
 - xiv. Request for waivers from this bylaw,
 - xv. Plan showing location and design of covered storage areas for petroleum and other hazardous products, land parcel,
- k. A copy of any Orders of Conditions, if determined to be necessary, from the Conservation Commission, or if no Orders of Conditions are necessary, a memo stating such from the Conservation Commission or their designee,
- l. A proposed form and amount of performance bond to be used (amount to be determined upon review of the Town or the Town's designee in an amount sufficient for the Town to pay to return the excavation to its original topography)

In the Amount of _____

The performance instrument must be kept current. Lapse in provision of current performance instrument(s) may result in a Cease and Desist until the performance requirement is satisfied.

- m. A plan of the land showing the maximum annual groundwater elevation as determined by an approved agent of the Board of Health and a copy of the receipt or canceled check for maximum groundwater elevation tests.

In EVERY instance, the maximum groundwater elevation shall be measured during the period of January 1 to March 31 in any of three (3) preceding years for the site, in the relative location of the proposed excavation.

3. No action will be taken by the Board regarding the applicant's removal of earth until a public hearing has been held by the Board.
4. All costs related to the public hearing shall be paid by the applicant. Notice of the public hearing shall have been given at least fourteen days in advance by the following three means:
 1. in a newspaper commonly used for such notices in the community, and
 2. the posting of copies of the public hearing notice on municipal bulletin boards, and
 3. the mailing of copies thereof sent certified return receipt requested to the abutters within 100 (one-hundred) feet per the most recent Town Assessor's list.
5. No permit shall be issued for earth removal by the Board until a favorable finding has been declared by the Board. A favorable finding shall be based upon conformance to this bylaw and, if applicable, prior experience of the Town with this applicant's earth removal.
6. Any permit issued hereunder shall automatically expire upon the completion of the earth removal project for which it was issued or at such other time as may be specified in said permit providing that the surety instrument shall be valid throughout that entire time without requiring further extension, but in no case for a period of more than three years.
7. Lapse of validity of the surety instrument constitutes immediate revocation of the permit. The need for the applicant to re-apply shall be determined after a meeting with the Board and the applicant.
8. Approval of the renewal of a permit for a period not in excess of one year may be made by the Board without a public hearing if the Board finds that all conditions have been complied with and that the work has been carried on continuously in good faith.

Section C. EXEMPTIONS

The Board shall require an agreement containing conditions for moving and/or removing of earth and a performance bond if in their judgment anything they deem as being "excessive" is to be done under this exemption clause. In most cases no permit shall be required for the following:

1. Where the removal is necessary in construction of a building or buildings being built in accordance with a permit issued by the proper Town authority and to the installation of walks, driveways and similar appurtenances to said building.
2. Where the removal is necessary as part of the construction of a road pursuant to a permit, or under agreements governing road construction in a subdivision approved by the Planning Board or by governmental authority to the extent as may be necessary to complete the project as planned and approved.
3. Where the removal is necessary in the daily use of an operating farm, nursery, garden, landscaping activities or cemetery to the extent that such removal is necessary to the operation or purpose of the same as determined by the Board or their designee.
4. Where the moving and/or removal of earth for any municipal purpose is by, or on behalf of any Department of the Town of Dudley, the Commonwealth of Massachusetts, or the federal government of the United States of America.
5. Where the removal is from a parcel for which removal was authorized under a legal permit issued prior to adoption of this by-law, the same may continue until the expiration date of said permit, provided that all by-laws, permits, surety instrument requirements and conditions applicable prior to the adoption of this by-law

shall be complied with. Subsequent to the adoption of the by-law full compliance with all requirements of this Earth Removal By-Law must be met.

6. Where such earth removal is permitted under the provisions of the Massachusetts General Laws (MGL), Chapter 40, Section 21, Paragraph 17.

Section D. ACTIVITIES IN LAWFUL OPERATION AT TIME OF ADOPTION OF THE EARTH REMOVAL BY-LAW

Earth removal activities in lawful operation on any one parcel of land at the time this by-law is adopted may continue under the limits of the current permit unless and until abandoned for more than 12 (twelve) consecutive months. Unless specifically authorized by a new permit issued in accordance with the provisions of this bylaw, the following shall apply to such lawful preexisting activity:

1. The depth of excavation shall not be increased below the grade of the lowest point excavated on the effective date of this by-law.
2. The total area of excavation within the parcel shall not be increased by more than 25 (twenty-five) percent over its excavated area on said effective date.
3. The average amount of materials extracted or removed per day shall not be increased by more than 25 (twenty-five) percent over such daily averages for the 12 (twelve) consecutive months preceding said effective date or for the actual period of operation if less than twelve months.

It is the applicant's responsibility to document the conditions of the site upon adoption of this bylaw so there is a baseline for determining allowable expansion. Confirmation of the documents submitted for continuation of earth removal may be reviewed by the Board and/or their designee at the expense of the applicant. Subsequent inspections to confirm compliance with this by-law may be ordered by the Board at the expense of the applicant.

Section E. SPECIFIC LIMITATIONS TO EARTH REMOVAL BY-LAW

1. No permit for the removal of earth shall be approved by the Board except upon condition that a cover of topsoil of not less than four (4) inches in depth and stabilized with seeding and/or hay bales and/or other methods as considered appropriate by the Board or their designee shall be replaced or allowed to remain, except where, due to construction of roads, buildings or other permanent physical features, such provision is impractical. Strict adherence to this limitation may be waived upon written request of the applicant and determination by the Board or their designee that the variation is of benefit to the Town.
2. No permit shall be issued for the removal of earth in any location if such removal:
 - a. Will endanger beyond a reasonable degree the public health or safety or constitute a nuisance as determined by the Board or their designee,
 - b. Will produce noise levels in excess of those in 310 CMR 7.11, dust or other effects observable at the lot lines in amounts seriously objectionable or detrimental to the normal use of adjacent property as determined by the Board or their designee,
 - c. Will result in the transportation of materials in such a manner as to cause traffic congestion or hazards, particularly on residential streets, as determined by the Chief of Police or his or her designee, within the limits of Massachusetts General Laws,
 - d. Will result in the transportation over ways which will be unduly injured thereby, as determined by the Highway Supervisor or his or her designee, within the limits of Massachusetts General Laws, and/or
3. No permit shall be issued if the excavation will occur within five (5) feet of the maximum annual ground water elevation at any single location on the site.

4. No permit shall be issued if the excavation will occur within 100 (one-hundred) feet of a stream and/or 200 (two-hundred) feet of a river.

Section F. GENERAL LIMITATIONS OF THE EARTH REMOVAL BY-LAW

1. No permit for the removal of earth shall be approved by the Board if the work extends within 300 (three-hundred) feet of a way open to public use whether public or private, or within 250 (two-hundred-fifty) feet of a building or structure unless the Board is satisfied that such removal will not undermine the way or structure.
2. In approving the issuance of a permit the Board shall impose reasonable conditions regarding the following, which shall accompany and shall constitute part of the permit, including but not limited to:
 - a. The finished leveling and grading requirements,
 - b. The placing of topsoil and planting/stabilization necessary to restore the area to usable or natural condition,
 - c. The duration of the earth removal operation,
 - d. The construction of necessary fencing and other protections against nuisances,
 - e. A copy of any Orders of Conditions, if determined to be necessary, from the Conservation Commission, or if no Orders of Conditions are necessary, a memo stating such from the Conservation Commission or their designee,
 - f. The method of removal,
 - g. Requirements for any proposed temporary construction,
 - h. Hours of operation,
 - i. Days/dates when operation shall not occur (holidays, etc.),
 - j. Conditions under which the Board or their designee may enter the excavation parcel,
 - k. Routes of transportation of material,
 - l. Control of temporary and permanent drainage,
 - m. Requested waivers granted, and
 - n. Disposition of boulders, tree stumps and other such materials.
3. Earth may be removed from any parcel of land within such parcel determined by the Board or their designee to be unsuited to agricultural use, and the Board may issue a permit for such removal provided however that the Board shall in making such decision obtain the recommendations of the appropriate Soil District Supervisor and the Worcester County Extension Director or Agent or their successors or designees, and their recommendations shall be made part of the records of the Board. In issuing a permit, the Board may impose reasonable conditions as to re-establishment of ground levels and grades.
4. The Board shall require a performance bond (or other security approved by the Board) to enforce performance of conditions imposed by this by-law or under this section. This may require review by the Board or their designee at the expense of the applicant.

Section G. GENERAL ADMINISTRATION OF THE EARTH REMOVAL BY-LAW

1. The Board and/or their designees may enter upon the premises involved from time to time to inspect and ensure proper conduct of the work per conditions regarding this in the permit.

2. Upon written request of the owner or permit holder the Board may hold a new public hearing at the expense of the owner or permit holder, and reissue or modify the permit subject to any regulations not in conflict with this by-law.
3. Upon petition of the abutters the Board may hold a new public hearing at the expense of the abutters, and reissue or modify the permit subject to any regulations not in conflict with this by-law.
4. The Board may order the revocation of or suspension of a permit if the conditions established in the permit are not complied with but the permit holder in such situation shall not be relieved of his or her obligations. The Board shall so inform the property owner of record and/or permit holder by certified, return receipt requested mail.

Section H. VIOLATIONS OF THE EARTH REMOVAL BY-LAW

1. If the Board concludes that there has been a violation of this by-law it shall so notify the offender in writing at the address stated on the initial application and if applicable shall include a notice ordering cessation of the improper activities. The Board shall so inform the property owner of record and/or permit holder by certified, return receipt requested mail.
2. If a property owner and/or permit holder persists in such violation the Board shall seek the imposition of the penalties authorized by MGL Chapter 40, Section 21, Paragraph 17 through appropriate legal action.
3. If the offender holds a permit issued under this by-law such permit may be revoked 30 calendar days after the first offense if the Board is not satisfied that the violation has been or is in the process of being resolved.

Section I. FEES FOR EARTH REMOVAL

1. The Board shall establish such fees for the issuance of permits as it shall find are necessary for the administration of this by-law including but not limited to the costs of advertising, notifying abutters, clerical, inspection, legal and policing expenses.
2. Any fees received hereunder shall be transmitted to the Town Treasurer for deposit in the Town's general revenue fund except the performance guarantee which shall be held by the Treasurer in accordance with Massachusetts General Laws.

TOWN OF DUDLEY

EARTH REMOVAL APPLICATION

1. ____ Legal name(s) of property owner(s) _____
 ____ Signature(s) of property owner(s) _____
2. ____ Legal address(es) of property owner(s) _____

3. ____ Legal name(s) of the applicant(s) _____

____ Signature(s) of the applicant(s)

4. ____ Legal address(es) of the applicant(s)

5. ____ Street address of the proposed excavation

____Dudley Assessors' Map and Lot number Map #_____ Lot #_____

6. ____ Names and addresses of all abutting property owners including those across any streets, roads or ways
(From Assessor's Office or on separate page)

7. ____ A plan of the land drawn and stamped by a Massachusetts Registered Land Surveyor at a scale of 1"=40'-0" showing general topography within 100 (one-hundred) feet of the proposed excavation, and within 100 feet of the proposed travel route to and from the area/s of excavation, and showing wetlands, and streams, and rivers within 250-feet of the proposed excavation, and structures within 250-feet of proposed excavation, and rare species priority habitats and estimated priority habitats per Massachusetts Division of Fisheries and Wildlife, and the property address, and the owner's name and address, and date of plan, and scale of plan, and assessor's map and lot number.

8. ____ A plan drawn and stamped by a Massachusetts Registered Land Surveyor at a scale of 1"=40'-0" showing EXISTING contours at 10 (ten) foot intervals of the site, proposed excavation area(s), location and design of covered storage areas meeting CMR requirements for petroleum and other hazardous products, and contours at 10 (ten) foot intervals as of the proposed COMPLETION of the Excavation Project, and the property address, and the owner's name and address, and date of plan, and scale of plan, and assessor's map and lot number.

9. ____ A plan showing location and design of covered storage areas for petroleum and other hazardous products.

10. ____ A narrative of the proposed plan describing how the following will be addressed:

- a. The description and purpose of the proposed excavation including the planned destination of material removed during the proposed excavation,
- b. The finished leveling and grading upon completion of the excavation,
- c. The placing of topsoil and planting/stabilization necessary to restore the area to usable or natural condition,
- d. The duration of the earth removal operation,
- e. The construction of necessary fencing and other protections against nuisances,
- f. The method of earth removal,
- g. Temporary construction,
- h. Hours of operation,
- i. Dates when operation shall not occur (holidays, etc.),
- j. Routes of transportation of material,
- k. Control of temporary and permanent drainage,
- l. Disposition of boulders, tree stumps and other such materials,
- m. Request for waivers from this bylaw,

11. ____ A copy of any Orders of Conditions, if determined to be necessary, from the Conservation Commission, or if no Orders of Conditions are necessary, a memo stating such from the Conservation Commission or their designee,

12. ____ A proposed form and amount of performance bond to be used (amount to be determined upon review of the Town or the Town’s designee in an amount sufficient for the Town to pay to return the excavation to its original topography)

In the Amount of _____
The performance instrument must be kept current. Lapse in provision of current performance instrument(s) may result in a Cease and Desist until the performance requirement is satisfied.

13. ____ A plan of the land showing the maximum annual groundwater elevation as determined by an approved agent of the Board of Health and a copy of the receipt or canceled check for maximum groundwater elevation tests.

In EVERY instance, the maximum groundwater elevation shall be measured during the period of January 1 to March 31 in any of three (3) preceding years for the site, in the relative location of the proposed excavation.

EARTH REMOVAL ~ PERMIT REVIEW & ROUTING

Assessor

Comments: _____

Signature: _____ Date: _____

Treasurer

Comments: _____

Signature: _____ Date: _____

Tax Collector

Comments: _____

Signature: _____ Date: _____

Highway Department

Comments: _____

Signature: _____ Date: _____

Police Department

Comments: _____

Signature: _____ Date: _____

Conservation Commission

Comments: _____

Signature: _____ Date: _____

Planning Board

Comments: _____

Signature: _____ Date: _____

Board of Health

Comments: _____

Signature: _____ Date: _____

Building Official

Comments: _____

Signature: _____ Date: _____

Board of Selectmen

Comments: _____

Public Hearing

Date Hearing Opened: _____ Date(s) Continued: _____

Date Hearing Closed: _____

Decision: _____ Vote: _____

Comments: _____

_____ Date: _____

Board of Selectmen

Signature _____ Date _____

Signature _____ Date _____

Signature _____ Date _____

Signature _____ Date _____

Signature _____ Date _____

ACTION TAKEN ON NOVEMBER 2, 2009.

Articles 14, 16, 18, and 22 (General) - I return with the approval of this Office, except where indicated (Article 22, portion of section H(2) deleted), the amendments to the town by-laws adopted under these Articles on the warrant for the Dudley Annual Town Meeting that convened on November 2, 2009.

Very truly yours,

Martha Coakley

Attorney General

By: Margaret J. Hurley, Assistant Attorney General

Chief, Central Massachusetts Division

Director, Municipal Law Unit

One Exchange Place

Worcester, MA 01608

Attest: _____

Ora E. Finn, Dudley Town Clerk

Return of Service:

I have posted the five (5) notices as requested at the places listed above on this ____ day of February 2010.

Constable, Town of Dudley